

# REA LAW JOURNAL

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## RECENT CASES

Commission Jurisdiction - Authority to Attach Conditions to Certificate of Convenience and Necessity.

Arkansas Department of Public Utilities issued an unconditional certificate of convenience and necessity to a rural electric cooperative corporation. Telephone association appealed from the ruling requesting that a condition be attached to the certificate of convenience and necessity requiring the grantee to indemnify telephone companies or the owner of telephone lines and equipment to the extent that telephone facilities might be impaired by reason of inductive interference. Held, affirming the ruling of the Department, that no such conditions might be added. Dep't of Pub. Util. v. McConnell, Ark. Sup. Ct., June 5, 1939.

The court states that the only conditions that the Department has authority to attach to a grant of a certificate of convenience and necessity are such limitations that relate to the construction, quality and extent of service in relation to rates and public service.

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Commission Jurisdiction - What Constitutes a Public Service Corporation.

Plaintiff electric cooperative corporation filed a bill against the State Public Service Department asking for declaratory judgment as to the plaintiff's legal status and the determination of whether the plaintiff was subject to the jurisdiction of the Department. Held, that the plaintiff was not a Public Service Corporation and therefore not subject to the jurisdiction of the Department.

Inland Empire Rural Electrification v. Dep't of Pub. Serv. of Wash., Wash. Sup. Ct., July 10, 1939.

The statute granting jurisdiction to the Department provided that it should have jurisdiction over "public service" companies and included as such, every "common carrier, gas company, electrical company...operating or managing any electrical plant for hire within this state." The court felt that if the literal terms of the statute were to be accepted the plaintiff was subject to Commission regulation. However, the court adopts the rule that "a private corporation cannot be converted into a public service corporation by mere legislative fiat. What it does is the important thing, not what it, or the state, says that it is." Adopting this as the rule the court then finds that the plaintiff was not conducting a business "dedicated or devoted to a public use." This conclusion was derived from the fact that the association did not hold itself out to serve the public but on the contrary, it merely offered to serve particular individuals of its own selection. Accordingly, the court concluded that the plaintiff was not a public service corporation and hence not subject to the jurisdiction of the Department of Public Service.

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Municipal Corporations - Validity of Street-Rentals for Use of Streets by Electric Companies.

Texas municipality enacted an ordinance levying a 4% gross receipt "street-rental" for the use of the streets by electric companies. The defendant utility seeks an injunction against an enforcement of the ordinance. Held, the



ordinance was invalid on the ground that the use of the streets within municipalities for the purpose of transmitting electric energy is a state matter and consequently cities have no power except that granted by specific state statute. Since no state statute has granted the power to levy street-rentals, such a levy is unauthorized. Houston Lighting & Power Co. v. Fleming, Tex. Civ. App., May 1939.

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Negligence - Electrical Equipment Installed in Dangerous Surroundings.

Electric company sold the plaintiff electric pumping equipment and installed the equipment in a well on the plaintiff's farm. Some years later, in using the electric switch at the well, the plaintiff's daughter caused an explosion claimed to be due to the presence of gas in the well. The plaintiff sues the electric company alleging that the latter knew or should have known of the presence of natural gas in the well and consequently was negligent in installing electrical equipment that might cause an explosion. Held, judgment for defendant. Kelley v. Pub. Serv. Co., 21 N.E.(2d) 43 (Ill. App. 1939).

The court had two grounds for the decision: (1) that the plaintiff had not demonstrated that the defendant knew of the presence of natural gas in the well at the time of the installation of the equipment. (2) Furthermore, the court felt that this case was analagous to the cases in which a gas company, not owning the pipes and appliances in a customers building, and exercising no control over them but merely furnishing the gas to be used therein, is held not liable for injuries caused by leaks or defects within the building unless there is proof of actual knowledge of a dangerous condition.

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Negligence - Intervening Act of Third Person.

Plaintiff was walking along public highway when he was struck by an unknown automobile and thrown against the exposed

guy wires of an electric light pole installed and maintained by defendant power company. The power company defends the action for damages for personal injuries on the ground that an independent act of a third person intervened between the possible negligence of the company in leaving exposed guy wires on the edge of a public highway and the injury to the plaintiff. Held, the plaintiff had stated a valid cause of action. Tobias v. Carolina Power & Light Co., 2 S.E.(2d) 686 (S.C. 1939).

The rule of the court is that since under all the attendant circumstances a reasonable man might have foreseen that the situation created by the defendant when combined with an intervening act of negligence on the part of a third person might cause an injury to some one, then the intervening act did not exculpate the defendant. See for a discussion of this problem 2 Restatement, Torts (1935) §435 et seq.

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Telephone Interference - Liability of Electric Cooperative.

X brought an action against the defendant electric cooperative to enjoin it from energizing its transmission lines until it paid into court a sum sufficient to "metallicize" the defendant's telephone lines as a protection against electrical interference. The jury found that the cooperative's electric lines would interfere with the telephone line and that the defendant was guilty of negligence in the manner of constructing its lines. Accordingly, judgment was rendered for the plaintiff for the amount of the cost of metallicizing the telephone system. Held, judgment reversed. McCulloch County Electric Cooperative v. Hall, Tex. Civ. App. July 12, 1939.

The court holds that in general the law is well settled that there is no liability for interference with the telephone line by a high power transmission line in the absence of negligence. As to the jury's finding of negligence in this case, the court feels that there is no evidence upon which it could be based. The transmission line in question was a



# REVIEWING THE LAW REVIEWS

Goldsmith, Passage of Title Under Cooperative Marketing Contracts (1939) 18 Oregon L. Rev. 157.

The author discusses the question "when does title pass" as between a cooperative and its members, and shows how the ordinary rules of sales law have been remodeled to fit the cooperative organization.

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Note (1939) Chattel Mortgages on Buildings on Leased Grounds, 13 Tulane L. Rev. 600.

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Schneider, Will Co-Operatively Owned Utilities Go Unregulated by State Commissions (1939) 1939 Wis. L. Rev. 409.

The author expresses his opinion that certain REA cooperatives may be subject to Commission control. Compare Packel, Commission Jurisdiction Over Utility Cooperatives (1937) 35 Mich. L. Rev. 411.

## LEGAL MEMORANDA RECEIVED IN JUNE

857a. Alabama cooperative serving Florida consumers.

973. Employer's liability (except Workmen's Compensation) (Wash.)

989. Pledging assets to secure individual accounts - Iowa State Bank.

990. Description of property in real and chattel mortgages.

992. Utility franchises (Texas).

993. Effect of statute requiring recordation of chattel mortgages within twenty days from the date thereof (Md.).

994. Conversion provision in Model Act - Practical effect of less than unanimous consent.

996. Divisibility of secondary franchises (Tenn.)

996a. Conditions which a political subdivision in Tennessee may attach to the grant of a secondary franchise or to the approval of the transfer of such franchise.

998. Financing the sale of irrigation equipment (Texas).

999. Proxy voting for conversion from Electric Membership Corporation to Cooperative Act (N.M.).

A-1. Voting districts in absence of statutory provision therefor.

A-2. Competitive bidding required for construction contracts and amendments thereto (Neb.).

A-3. Whether applications for membership in a cooperative can be accepted by a general resolution of the board of directors which does not mention the names of the applicants.

A-4. Necessity of obtaining a franchise for construction of lines across highways in a state in which a statute requires the obtaining of a franchise for construction of lines "in and along the highways."

A-5. Grant of an easement over homestead property by the separate action of either the husband or wife (Tex.).

A-6. The power of the Ohio State Highway Department to impose a condition to the granting of a highway permit that the electric company will bear the cost of replacing poles located on private property in the event a widening of the highway necessitates their replacement.

A-7. Validity of easements where there is a lack of specific description of the rights of way.



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for the purposes of" the tax statute. Op. Atty. Gen. Colo., May 10, 1939, Prentice-Hall, St. & Loc. Tax Serv., Colo. Tax, para. 23,020.

#### Mortgage Tax - Trust Deed to United States Securing REA Loan Exempt from Tax.

Deed of trust of non-profit cooperative corporation executed to bank as trustee for benefit of United States to secure loans made by the Rural Electrification Administration, which loans are evidenced by notes payable to United States, is exempt from mortgage registration tax. Op. Atty. Gen. Okla., March 22, 1939, Prentice-Hall, St. & Loc. Tax Serv., Okla. Tax, para. 36,507.

#### Requirements for Contractors License in Alabama.

Alabama Statute requires a contractor's license to be obtained by anyone who performs work on a "structure". Ruled, that one who accepts a contract to build an electric transmission line, including excavation, erection of posts and wiring, is working on a "structure" within the meaning of the Act. An earlier opinion ruled that a contractor having an office within Alabama must obtain the license in the county in which he maintains his principal office of business, and that obtaining a license in the county where the work is to be performed is not proper compliance with the statute. Ops. Atty. Gen. Ala., April 25 and May 8, 1939, Prentice-Hall, St. & Loc. Tax Serv., Ala. Tax, para nos. 44,125 and 44,129.

#### ADMINISTRATIVE INTERPRETATIONS

##### Electric Power Used in Refrigeration is Not Exempt from Taxation.

While electric power used for purpose of manufacturing, etc. is exempt from taxation, such power used for refrigeration purposes is not used in manufacturing and "where service is supplied to a single customer for two or more purposes, the specific use for which it is furnished shall determine whether the tax attaches; and if used through one meter for more than one purpose, the predominant character of service for which it is used shall determine the classification thereof

##### Rural Electric Cooperative Association - Distributable Property Not Assessable by State Tax Commission.

Ruling that the State Tax Commission is not authorized to assess distributable property of rural electric cooperative associations since such associations are not public utilities. Op. Atty. Gen. Mo., October 15, 1938, Prentice-Hall, St. & Loc. Tax Serv., Mo. Tax, para. 50,016.



TAX MEMORANDA

- T-139 Michigan taxes.
- T-140 Municipal taxation of cooperative power lines within City limits.
- T-141 Taxation of Washington Non-profit Cooperative Associations and Water Power Utility Districts.
- T-142 Michigan ad valorem taxes.
- T-143 Alabama excise tax on electric utilities.
- T-144 Florida taxes paid by an Alabama cooperative extending its lines into Florida.
- T-145 Taxation of membership fees of Utah projects.

RECENT STATUTES

FLORIDA

Enacts Rural Electric Cooperative Act

Another state adopts the new Rural Electric Cooperative Act providing for the incorporation, organization, and general management of cooperatives engaged in rural electrification (H.B. No. 172, approved May 25, 1939).

NEW HAMPSHIRE

Rural Electric Cooperatives Authorized

The Cooperative Association Act has been amended to permit the incorporation of cooperatives organized to engage in rural electrification. The cooperatives are granted broad powers including the power of eminent domain. Exemption from commission jurisdiction is granted. (H.B. No. 392, approved June 16, 1939).

MICHIGAN

Legislation Regulating Transmission Lines Bordering Airports

It is now unlawful to erect transmission lines over 30 feet in height within a thousand feet of an airport

or landing field. (Pub. Act No. 315, approved June 22, 1939).

General Incorporation Act Amended

The sections relating to the tenure, number, etc. of trustees of the General Incorporation Act have been amended (Act No. 287, approved June 20, 1939).

MISSOURI

Enacts Rural Electric Cooperative Act

Missouri also passes the new Rural Electric Cooperative Act. (H.B. No. 567, approved July 8, 1939).

SOUTH CAROLINA

Legislature Requests P.S.C. to Withhold Utility Permits Competing With REA Projects

The Senate and House of Representatives by a concurrent resolution requested the S.C. Public Service Commission to withhold permits applied for by power companies where the grant would result in competition between the power company and REA projects. The Commission is asked to allow a sufficient period to elapse (at least six months) to permit the REA project to be constructed. (S.B. No. 918, approved June 2, 1939).

WISCONSIN

Taxation Exemption Granted

An amendment to the tax act grants exemption of all cooperative associations engaged in rural electrification from all general property and income taxes and levies in lieu thereof a 3% gross receipt license tax. (c.132, approved June 2, 1939) For a discussion of advantages of such provisions see Altkrug, Ad Valorem Taxation of REA Cooperatives (1939) 1 REA L. J. 62.



